

Walter Reichert, M.D. \* June 24, 2016

<div>IN THE UNITED STATES DISTRICT COURT DISTRICT OF UTAH, CENTRAL DIVISION</div> <div>JOSHUA CHATWIN, ) ) Deposition of: Plaintiff, ) ) WALTER REICHERT, M.D. vs. ) ) Civil No. DRAPER CITY; OFFICER J. ) 2:14-cv-00375 PATTERSON, in his ) individual and official ) Judge Dale A. Kimball capacity; OFFICER DAVID ) HARRIS, in his individual ) and official capacity; ) OFFICER HEATHER BAUGH, in ) her individual and official ) capacity; and JOHN DOES ) 1-10, ) ) Defendants. ) June 24, 2016 * 3:47 p.m. Location: Western Neurological Center, P.C. 1187 East 3900 South Salt Lake City, Utah 84124 Reporter: Lisa Bernardo, CSR, RPR</div>	<div>1 PROCEEDINGS 2 3 WALTER REICHERT, M.D., 4 called as a witness, being first duly sworn, was 5 examined and testified as follows: 6 7 EXAMINATION 8 BY MR. HAMILTON: 9 Q. Thank you, Dr. Reichert. I apologize 10 again for the delay in starting the deposition. 11 Thank you for your patience. 12 I'm sure you have had your deposition 13 taken before, correct? 14 A. I have. 15 Q. When was the last time you had your 16 deposition taken? 17 A. You know, I honestly don't remember. It's 18 been a long time. Years ago. 19 Q. Since it's been such a long time, I'm just 20 going to go over some rules really quickly that will 21 help this process go quicker and smoother. 22 I'm here to ask you questions about you 23 being retained as an expert witness on the other side 24 of this case, and so I'm not here to try to trick you 25 in any way. I'm just trying to understand your</div>
<div>1 A P P E A R A N C E S 2 FOR THE PLAINTIFF: 3 Lisa A. Marcy 4 CLYDE SNOW &amp; SESSIONS&lt; P.C. 5 Attorneys at Law 6 201 South Main Street, 13th Floor 7 Salt Lake City, Utah 84111 8 Tel: 801.322.2516 9 Email: lmarcy@clydesnow.com 10 11 FOR THE DEFENDANT: 12 R. Blake Hamilton 13 DURHAM JONES &amp; PINEGAR, P.C. 14 Attorneys at Law 15 111 East Broadway, Suite 900 16 Salt Lake City, Utah 84111 17 Tel: 801.415.3000 18 Email: bhamilton@djplaw.com 19 20 ALSO PRESENT: 21 Mark Barker, Draper City 22 Libby Lowther, Lowther &amp; Associates 23 24 -oOo- 25 I N D E X</div> <div>WALTER REICHERT, M.D.: Examination by Mr. Hamilton 3 Examination by Ms. Marcy 67 Further Examination by Mr. Hamilton 79 -oOo-</div> <div>E X H I B I T S NO. DESCRIPTION PAGE 1 Report of Expert Witness Walter Reichert M.D. 5</div>	<div>1 opinions, your methodology in formatting those 2 opinions. 3 If I ask a question you don't understand, 4 please just ask me to rephrase, okay? Does that make 5 sense? 6 A. Yes. 7 Q. And you understand that you just were 8 administered an oath, correct? 9 A. I do. 10 Q. It's the same oath that you would be under 11 if you were to testify at a court of law, so even 12 though we're sitting here in your offices you are 13 under the same obligations. Do you understand that? 14 A. I do. 15 Q. Is there any reason why you cannot give 16 truthful testimony today? 17 A. No. 18 Q. Any reason why your testimony would be 19 impaired in any way? 20 A. No. 21 Q. Are you on any medication or any medical 22 condition that would cause your testimony to be 23 impaired? 24 A. No. 25 Q. At any point in time if you want to take a</div>

<p style="text-align: right;">13</p> <p>1 A. Correct.</p> <p>2 Q. So that is a direct quote from Ms. Marcy?</p> <p>3 A. Correct.</p> <p>4 Q. So at that point in time, did she provide</p> <p>5 you any information about why she believed Mr.</p> <p>6 Chatwin was thrown to the ground?</p> <p>7 A. No.</p> <p>8 Q. But she is the one that used that term,</p> <p>9 "thrown to the ground"?</p> <p>10 A. Yes.</p> <p>11 Q. And you then go on and offer your opinion.</p> <p>12 "It is my opinion that Mr. Chatwin suffered injuries</p> <p>13 after being thrown to the cement. This will result</p> <p>14 in future damages."</p> <p>15 And that's your stated opinion to that</p> <p>16 question, correct?</p> <p>17 A. Correct.</p> <p>18 Q. I would like to look specifically at that</p> <p>19 opinion for a moment. When you use the term "thrown</p> <p>20 to the cement," what are you basing the fact that he</p> <p>21 suffered those injuries because he was thrown to the</p> <p>22 cement?</p> <p>23 A. I base that opinion on his injuries. If</p> <p>24 you're wondering do I know that he was thrown to the</p> <p>25 ground, of course, I don't know that he was thrown to</p>	<p style="text-align: right;">15</p> <p>1 Q. -- is that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And so you're not some forensic expert</p> <p>4 that's looking at injuries and trying to determine</p> <p>5 what caused those injuries, true?</p> <p>6 A. I cannot -- I am not an expert in that</p> <p>7 kind of field.</p> <p>8 Q. And so you cannot testify or provide an</p> <p>9 expert opinion about what type of action caused an</p> <p>10 injury, true?</p> <p>11 A. I really can't. I am just on, look, I --</p> <p>12 I'll hit the rewind button for one second. I see the</p> <p>13 patient. It's been a couple of years now because his</p> <p>14 accident, if I remember, it was like 2012. '14.</p> <p>15 Excuse me. Oh, '10. Oh, my God. Okay. That's a</p> <p>16 long time ago. Excuse me. And I was not there. I</p> <p>17 am not an expert in the physics of bodies twisting</p> <p>18 and turning. I know what he suffered, but exactly</p> <p>19 what kind of force it may have taken to have him</p> <p>20 suffer those injuries and what exact position he was</p> <p>21 in and these kind of details, I can only rely on the</p> <p>22 evidence from what I have here. Does that answer</p> <p>23 your question?</p> <p>24 Q. It does, but I want to make sure the</p> <p>25 record is clear. So when you state, "It is my</p>
<p style="text-align: right;">14</p> <p>1 the ground because, of course, it's obvious that I</p> <p>2 wasn't there. But my opinion is based on his</p> <p>3 injuries, not being thrown. Does that make -- do I</p> <p>4 make myself clear?</p> <p>5 Q. No. I need to get a little more</p> <p>6 clarification from that. Based upon his injuries</p> <p>7 alone, would you be able to tell us to a reasonable</p> <p>8 degree of medical certainty that he actually had been</p> <p>9 thrown to the ground?</p> <p>10 A. I don't think I can state that.</p> <p>11 Q. So you're not of the opinion that his</p> <p>12 physical injuries to a reasonable medical degree of</p> <p>13 certainty indicate that he actually was physically</p> <p>14 thrown to the ground?</p> <p>15 A. Let me see if I can answer your question</p> <p>16 this way, Mr. Hamilton. I am not an expert in the</p> <p>17 physics of bodily harm, can I say, do you know what I</p> <p>18 mean, or the physics of seeing people twisted and</p> <p>19 turned. So in that sense, I don't think I can answer</p> <p>20 your question to know if he was actually thrown or if</p> <p>21 he fell or exactly what happened. Does that answer</p> <p>22 your question?</p> <p>23 Q. Sure. You don't have any expertise in</p> <p>24 kinesiology --</p> <p>25 A. That would be a good word to use.</p>	<p style="text-align: right;">16</p> <p>1 opinion that Mr." -- you put Chaplin --</p> <p>2 A. That's a mistype.</p> <p>3 Q. A typo?</p> <p>4 A. Yeah.</p> <p>5 Q. "Mr. Chatwin suffered injuries after being</p> <p>6 thrown to the cement." That's really not your</p> <p>7 opinion. You are not saying that he was thrown to</p> <p>8 the cement?</p> <p>9 A. There's two answers in that question.</p> <p>10 One, he suffered injuries, and, two, was he thrown.</p> <p>11 I guess I would have to say if we're deciding. If</p> <p>12 we're going to parse that sentence up, I would have</p> <p>13 to say that he did suffer injuries and how those</p> <p>14 injuries occurred after being -- was he thrown or did</p> <p>15 they occur in some other way, I can't answer.</p> <p>16 Q. Okay. So your opinion really is that he</p> <p>17 did suffer injuries?</p> <p>18 A. That is true.</p> <p>19 Q. Going to the next sentence, you say, "This</p> <p>20 will result in future damages."</p> <p>21 Now, with respect to that sentence, is</p> <p>22 that your opinion?</p> <p>23 A. It is.</p> <p>24 Q. What type of future damages do you entail</p> <p>25 that he may suffer?</p>

<p style="text-align: right;">21</p> <p>1 A. How can I answer that question?</p> <p>2 Q. Let me move on to a different question.</p> <p>3 When was the last time you diagnosed someone with</p> <p>4 tinnitus?</p> <p>5 A. I don't diagnose people with tinnitus.</p> <p>6 They say, I've got a ringing in my ear. I say,</p> <p>7 you've got tinnitus.</p> <p>8 Q. Would you agree with me that there are</p> <p>9 specialists that can diagnose a person with tinnitus?</p> <p>10 A. They can't diagnose it anymore than I can</p> <p>11 than I just did with you. If they said -- if you</p> <p>12 came in and said, I've got ringing in my ear, and</p> <p>13 they said, you don't have ringing in your ear, then</p> <p>14 you would say, Doctor, either I'm a liar or you</p> <p>15 aren't telling me the truth.</p> <p>16 Q. So when you say that he had tinnitus,</p> <p>17 you're basing that off of his self-report, correct?</p> <p>18 A. That is the only way it gets reported,</p> <p>19 that is tinnitus. There is no testing that can be</p> <p>20 done that -- that is -- if somebody comes in -- okay,</p> <p>21 we're getting off topic, but let's go ahead. If</p> <p>22 somebody comes in and says, I've got a headache, and</p> <p>23 the doctor says, no, you don't, you would say this</p> <p>24 doctor is out of his gourd. He's a liar. If you come</p> <p>25 in and say, I've got ringing in my ear, and the</p>	<p style="text-align: right;">23</p> <p>1 once, I think that is correct. You would have to</p> <p>2 review my records to be absolutely certain, but let's</p> <p>3 accept that for right now.</p> <p>4 Q. And let's jump down here now to question</p> <p>5 3 --</p> <p>6 A. Okay.</p> <p>7 Q. -- because your answer, little paragraph</p> <p>8 (b), your answer to question number 2 is similar to</p> <p>9 your response to question number 3.</p> <p>10 Question 3 was, "Whether the tinnitus in</p> <p>11 Mr. Chatwin's ear was caused by the incident."</p> <p>12 And you stated, "It is my opinion that his</p> <p>13 tinnitus is caused by the injury, as above."</p> <p>14 A. Uh-huh (affirmative).</p> <p>15 Q. Is that your opinion?</p> <p>16 A. That is my opinion.</p> <p>17 Q. And so when I was talking about reviewing</p> <p>18 Dr. Goldman's report, you saw that he was critical</p> <p>19 with you with respect to that opinion. Did you see</p> <p>20 that?</p> <p>21 A. Okay. Let's just look. Let me just</p> <p>22 review what he said real quick. It is here. And</p> <p>23 maybe you can point me to the page in which he is</p> <p>24 remarking or critical of my -- I'm on page 13.</p> <p>25 Q. If you go to page 14.</p>
<p style="text-align: right;">22</p> <p>1 doctor says, no, you don't, you would say this guy</p> <p>2 needs his hearing checked, right? Okay. That's what</p> <p>3 we're talking about.</p> <p>4 Q. Sir, you're aware that Mr. Chatwin had</p> <p>5 gone and seen an otorhinolaryngologist, correct?</p> <p>6 A. I am.</p> <p>7 Q. And I apologize. How do you say that</p> <p>8 word?</p> <p>9 A. Otorhinolaryngologist.</p> <p>10 Q. Otorhinolaryngologist?</p> <p>11 A. Uh-huh (affirmative). Audiometrics. Who</p> <p>12 know audiometrics?</p> <p>13 Q. Yeah. I have a brother that teaches up at</p> <p>14 the University of Colorado and he's an ear, nose,</p> <p>15 throat specialist, and I never attempt to try to say</p> <p>16 what he calls himself. I just stick with ear, nose,</p> <p>17 throat.</p> <p>18 A. Yeah. That's reasonable.</p> <p>19 Q. So you knew that he had gone and seen that</p> <p>20 specialist?</p> <p>21 A. I did.</p> <p>22 Q. And you knew that he had never followed up</p> <p>23 with that specialist?</p> <p>24 A. Okay. If I said that, then I don't</p> <p>25 remember right now, but, sure. If he just saw him</p>	<p style="text-align: right;">24</p> <p>1 A. 14.</p> <p>2 Q. If you look at that first paragraph.</p> <p>3 A. I am looking.</p> <p>4 Q. Sorry. I apologize. And then flip over</p> <p>5 to the next page. It continues on and then if you</p> <p>6 look, he actually responds specifically to your</p> <p>7 opinion number 3 there where the paragraph says</p> <p>8 "Number 3." Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. He says, "Tinnitus is an extremely</p> <p>11 difficult process to understand, even more so to</p> <p>12 treat."</p> <p>13 Would you agree with that?</p> <p>14 A. I would agree with the second half of that</p> <p>15 sentence. It's extremely difficult to treat. I</p> <p>16 would disagree with the first half of that, that most</p> <p>17 cases of tinnitus that I see are in patients that</p> <p>18 have had -- that have what's called otosclerosis,</p> <p>19 where they're more elderly patients and they have --</p> <p>20 this is a lousy term, but let me use it -- arthritis</p> <p>21 of the little bones in their ears that cause</p> <p>22 conductive hearing loss and they will then develop</p> <p>23 tinnitus as part of their hearing loss. That is very</p> <p>24 hard to treat.</p> <p>25 There can be multiple causes of tinnitus,</p>

<p style="text-align: right;">37</p> <p>1 do with an overactive nervous system, probably has to</p> <p>2 do with the trigeminal nerve. It's something people</p> <p>3 just don't make up. It's a real neurological</p> <p>4 problem. Guess what? There's no blood test, there's</p> <p>5 no imaging, there's no migraine, you know, factor</p> <p>6 that we can order. People come and say -- the reason</p> <p>7 we do all of this imaging on people with migraine is</p> <p>8 to make sure that they don't have another more</p> <p>9 serious medical problem that we are not diagnosing</p> <p>10 while we're -- why we think we're treating their</p> <p>11 migraine. So migraine is, by definition, assuming</p> <p>12 we've excluded all other medical problems, a</p> <p>13 physiological condition.</p> <p>14 Q. That is only noted because of a</p> <p>15 self-report of the patient?</p> <p>16 A. That's because they have a history to</p> <p>17 support that condition.</p> <p>18 Q. And when you say "history," in fact, you</p> <p>19 continue on with your opinion there and you say,</p> <p>20 "This opinion is based on his history. I consider</p> <p>21 him a reliable historian."</p> <p>22 We have already talked about why you</p> <p>23 consider him a reliable historian.</p> <p>24 A. That is correct.</p> <p>25 Q. You would agree with me, though, that one</p>	<p style="text-align: right;">39</p> <p>1 saw you, he said his migraines were better; is that</p> <p>2 correct?</p> <p>3 A. Yes. When I saw him again, I said, hey --</p> <p>4 let me just look at my note here real quick.</p> <p>5 Migraine. Had a few mild headaches only,</p> <p>6 yeah. And he hadn't -- he said, I haven't really</p> <p>7 needed to use it. Uh-huh. They seemed to get a</p> <p>8 little bit better, so, yeah.</p> <p>9 Q. You continue on in this opinion and I'm</p> <p>10 looking now at little (e) paragraph.</p> <p>11 A. Little (e) paragraph. Okay.</p> <p>12 Q. You state there, "He complains of</p> <p>13 depression. This is based on his history. Again, I</p> <p>14 consider him a reliable historian."</p> <p>15 So with respect to depression, you're not</p> <p>16 an expert psychologist, right, or psychiatrist?</p> <p>17 A. Okay. A little background.</p> <p>18 Q. That's all right.</p> <p>19 A. As part of my neurological training I did</p> <p>20 psychiatry rotations. I am not a psychiatrist or a</p> <p>21 practicing psychiatrist. I don't treat people for</p> <p>22 psychiatric problems. But I did do psychiatry as a</p> <p>23 neurologist and my board exam, I'm sorry, my board</p> <p>24 certificate is from, what it's actually called,</p> <p>25 American Board of Psychiatry and Neurology.</p>
<p style="text-align: right;">38</p> <p>1 way that you can corroborate history is by seeing if</p> <p>2 that is something that he's complained about as he's</p> <p>3 been treated?</p> <p>4 A. That's true.</p> <p>5 Q. For example, if Mr. Chatwin really was</p> <p>6 suffering from worsening migraines, if he would have</p> <p>7 been seen by someone from the headache clinic at the</p> <p>8 U and there were medical records, you would be able</p> <p>9 to corroborate his self-reporting to you with those</p> <p>10 medical records?</p> <p>11 A. We always like corroboration or other</p> <p>12 records if we've got them.</p> <p>13 Q. And you didn't have them in this case,</p> <p>14 correct?</p> <p>15 A. We did not have them in this case.</p> <p>16 Q. And with respect to him being a reliable</p> <p>17 historian, one of the reasons you told me he was a</p> <p>18 reliable historian was specifically his communication</p> <p>19 to you about his migraines and the fact that the</p> <p>20 first time he saw you he was telling you about how</p> <p>21 his migraines had increased since the incident almost</p> <p>22 six years ago?</p> <p>23 A. Yeah.</p> <p>24 Q. And that you gave him some medication and</p> <p>25 he never took that medication, but the next time he</p>	<p style="text-align: right;">40</p> <p>1 Q. Would you hold yourself as a board</p> <p>2 certified psychiatrist?</p> <p>3 A. No.</p> <p>4 Q. Would you say you have expertise as a</p> <p>5 psychiatrist?</p> <p>6 A. No.</p> <p>7 Q. Do you frequently treat patients with</p> <p>8 psychiatric conditions?</p> <p>9 A. What do you mean by "psychiatric</p> <p>10 conditions"?</p> <p>11 Q. Do you -- well, let's look specifically at</p> <p>12 depression. Do you frequently treat people with</p> <p>13 depression and prescribe them antidepressants?</p> <p>14 A. If it's related to their neurological</p> <p>15 problem. I don't treat people just for psychiatric</p> <p>16 depression, anxiety, that kind of thing. But if, for</p> <p>17 example, if somebody comes in with migraine headaches</p> <p>18 and -- let me put it this way. The most number one</p> <p>19 common comorbidity in people that have migraine is</p> <p>20 actually anxiety, with some depression.</p> <p>21 If somebody comes in and says, my, God,</p> <p>22 I've got these migraine headaches, they're killing</p> <p>23 me, and, by the way, I'm not having panic attacks,</p> <p>24 and whatever, I might start them on an</p> <p>25 antidepressant/ antianxiety agent. But I am not a</p>

<p style="text-align: right;">41</p> <p>1 psychiatrist and I will tell them if they have a real 2 problem, they've got to see somebody who's got 3 expertise in this, because this is, you know, beyond 4 my expertise. 5 But to answer your question, yes, I 6 sometimes do use those medications if it is relevant 7 to their neurological care. 8 Q. So the only time that you would prescribe 9 an antidepressant or an anti-anxiety drug is if it's 10 related to their neurological condition and then you 11 would tell them to go have a psychiatrist or someone 12 with those expertise treat them with respect to that? 13 A. Or even sometimes even their general 14 practitioner will sometimes take over that kind of 15 care, because sometimes the GPs give people all of 16 these antidepressants and stuff, which, for better or 17 for worse, that's just the way it works out. Because 18 I don't want to go into a big, huge thing about 19 mental health, but -- so I won't. 20 But be that as it may, if it's -- I'll 21 repeat myself again. If it's relevant to their 22 neurological care and I think I can handle it, I will 23 do, but I don't treat people just for psychiatric 24 problems and I'm not a psychiatrist. 25 Q. And that's because you don't have those</p>	<p style="text-align: right;">43</p> <p>1 workup, would you? 2 A. No. 3 Q. Because that's not something you do? 4 A. No. 5 Q. Going back to your opinion number 1, I 6 apologize to do that, but I want to clarify one 7 thing. You would agree with me that neurologists 8 don't commonly get into the causation? You said 9 that's something we as lawyers like to talk about, 10 but you would agree with me that neurologists don't 11 commonly give opinions about the causes of head 12 injuries, correct? 13 A. Let me qualify that. Okay. If someone is 14 in a car and smashes into a brick wall and they have 15 a head scenario, I would say smashing into that brick 16 wall caused their head injury. 17 Q. Sure. But you wouldn't get into 18 testifying about what amount of force? 19 A. I can't do that, no. No, I cannot do 20 that. 21 Q. And you didn't do that in this case? You 22 didn't go through any type of methodology to 23 determine whether he was thrown to the ground, 24 correct? 25 A. I did not.</p>
<p style="text-align: right;">42</p> <p>1 expertise? 2 A. I don't have those expertise. 3 Q. And you wouldn't claim that you are 4 otherwise qualified to give an opinion about a 5 patient's psychiatric condition, correct? 6 A. I would have to say no. I mean, look, 7 I've been hanging around a long time. I have a 8 pretty good idea of where they're at, but not really. 9 Q. And would you agree with me that 10 neurologists don't commonly give opinions about 11 psychiatric conditions? 12 A. That's probably true. Yes. 13 Q. With respect to determining Mr. Chatwin's 14 psychiatric condition of depression, again, you just 15 are basing that off of what he reported to you, 16 correct? 17 A. That's correct. 18 Q. You had no records showing that he had 19 been treated for depression? 20 A. None that I can think of right now without 21 reviewing his records. None of which I'm aware of 22 right at this time. 23 Q. And you wouldn't be here to offer an 24 opinion about the methodology or be able to testify 25 about the methodology of creating a psychiatric</p>	<p style="text-align: right;">44</p> <p>1 Q. I would like you to look at question 2 number 6. 3 A. Uh-huh (affirmative). 4 Q. Question number 6 was, "The amount of 5 force required to cause Mr. Chatwin's shoulder 6 injury." 7 And, again, that's in quotation marks. 8 With respect to all of these questions, they are all 9 in quotation marks. So my understanding from your 10 earlier testimony was that that was because Ms. Marcy 11 provided you that question? 12 A. She provided me that question, yes. 13 Q. And she would have given that to you 14 verbatim, that was the question she gave you? 15 A. That was the question she gave me. 16 Q. And if you look further in that paragraph, 17 your next sentence says, "It is my opinion that a 18 significant amount of force would have been required 19 to produce a shoulder injury." 20 A. Uh-huh (affirmative). 21 Q. Sir, are you a board certified orthopedic 22 surgeon? 23 A. No. 24 Q. Okay. Do you have any board 25 certifications with respect to being an orthopedist?</p>



<p style="text-align: right;">45</p> <p>1 A. No.</p> <p>2 Q. Do you have any experience as an</p> <p>3 orthopedist?</p> <p>4 A. No.</p> <p>5 Q. Do you frequently treat patients'</p> <p>6 orthopedic conditions?</p> <p>7 A. Yes, in the sense that when people come</p> <p>8 into my office with pain in an extremity, arm pain,</p> <p>9 back pain, leg pain, that I examine them carefully</p> <p>10 for an orthopedic cause for their symptoms, which may</p> <p>11 involve determining whether or not an orthopedic</p> <p>12 condition exists.</p> <p>13 For example, I saw a patient recently who</p> <p>14 came in for a, quote, back problem, who turned out to</p> <p>15 have a vascular necrosis of both of his hips. So I</p> <p>16 am not a board certified orthopedist.</p> <p>17 Again, I've hung around and so I am aware</p> <p>18 that sometimes orthopedic problems can mimic</p> <p>19 neurological problems in terms of pain in an</p> <p>20 extremity. I don't treat those problems and if they</p> <p>21 seem to exist, I send them to an orthopedist.</p> <p>22 Q. Would you agree with me that you don't</p> <p>23 have qualifications to give an opinion about a</p> <p>24 patient's orthopedic condition?</p> <p>25 A. I would -- I would parse that up in this</p>	<p style="text-align: right;">47</p> <p>1 that just on -- on not expertise of being an expert</p> <p>2 in kinesiology, thank you for that word. But, hey,</p> <p>3 listen, my personal experience about being around</p> <p>4 people that are intoxicated is they tend to collapse</p> <p>5 to the ground. And if I have to eat my words on</p> <p>6 question number 6, then I will, because I maybe went</p> <p>7 out a little bit on a limb.</p> <p>8 Q. So with respect to number 6, is it fair to</p> <p>9 say that as we're sitting here today that you don't</p> <p>10 believe you should have probably been giving an</p> <p>11 opinion on question 6?</p> <p>12 A. Yes, that's probably true. Okay. That's</p> <p>13 probably true. I may have gone out a little bit on a</p> <p>14 limb for that one.</p> <p>15 Q. And so with respect to number 6 and in</p> <p>16 your opinion regarding number 6, at trial you don't</p> <p>17 anticipate testifying and providing that opinion at</p> <p>18 trial?</p> <p>19 A. I don't think I could do that at trial in</p> <p>20 open court. I really don't think I could.</p> <p>21 Q. And I know these are kind of similar to</p> <p>22 other questions I have asked, but I just want to make</p> <p>23 sure this is clear as well. You don't have any</p> <p>24 expertise in police practices, correct?</p> <p>25 A. No. No.</p>
<p style="text-align: right;">46</p> <p>1 way. If someone comes in and they have a shoulder</p> <p>2 problem and I move their arm at the shoulder and it</p> <p>3 hurts, I would say you have a shoulder problem.</p> <p>4 Now, if by that you mean is that an</p> <p>5 orthopedic problem and do I have qualifications to</p> <p>6 say you've got a shoulder problem, I'd say I have</p> <p>7 that qualification. But if you're asking me do I</p> <p>8 have qualifications to say do you have a rotator --</p> <p>9 does that patient have a rotator cuff tear, do they</p> <p>10 have a subacromial bursitis, do they have an</p> <p>11 occipital tinnitus, I do not have those expertise.</p> <p>12 Q. Specifically, do you have the expertise in</p> <p>13 diagnosing a separated shoulder?</p> <p>14 A. No.</p> <p>15 Q. And, again, we have already gone into the</p> <p>16 fact that you don't believe you have expertise to</p> <p>17 diagnose how much force was used to cause an injury?</p> <p>18 A. That is correct.</p> <p>19 Q. So with respect to your opinion under</p> <p>20 number 6, would you stand by that opinion?</p> <p>21 A. Okay. I may have gone out a little bit on</p> <p>22 a limb there. I will tell you this. Mr. Chatwin is</p> <p>23 a very muscular guy. I base that opinion, and maybe</p> <p>24 I'll have to eat my words a little bit, so be it, but</p> <p>25 here we go. He's a very muscular guy, and I base</p>	<p style="text-align: right;">48</p> <p>1 Q. You don't have any --</p> <p>2 A. No.</p> <p>3 Q. -- expertise with respect to use of police</p> <p>4 force?</p> <p>5 A. I have none.</p> <p>6 Q. Or what a proper maneuver by the police</p> <p>7 would be to take somebody into custody?</p> <p>8 A. I have no idea about any of that.</p> <p>9 Q. So if we could look up to number 5.</p> <p>10 A. Uh-huh (affirmative).</p> <p>11 Q. And we're going to bounce around just a</p> <p>12 little bit here because this kind of ties into</p> <p>13 another portion of your report as well.</p> <p>14 Question number 5 was, "The effects of</p> <p>15 alcohol and balance, posture and coordination."</p> <p>16 And you say, "The patient's blood alcohol</p> <p>17 level was extremely high at 0.319. At this level,</p> <p>18 alcohol would significantly impair his cognition,</p> <p>19 coordination, dexterity, speech, and balance. At</p> <p>20 levels greater than 0.25 there is a risk of</p> <p>21 asphyxiation and choking, at levels greater than 0.30</p> <p>22 stuporous possible, and at levels greater than 0.35,</p> <p>23 coma may be present."</p> <p>24 What qualifications do you have with</p> <p>25 respect to diagnosing the conditions of a person that</p>

<p style="text-align: right;">49</p> <p>1 is intoxicated?</p> <p>2 A. I have no special -- I have no special</p> <p>3 expertise.</p> <p>4 Q. So where are you drawing those conditions</p> <p>5 from? What --</p> <p>6 A. Research off the internet.</p> <p>7 Q. So when you were asked that question by</p> <p>8 Ms. Marcy, the effect of alcohol --</p> <p>9 A. Yeah.</p> <p>10 Q. -- and balance, posture and coordination,</p> <p>11 what you did is just got online --</p> <p>12 A. I got online.</p> <p>13 Q. What did you look at?</p> <p>14 A. I looked at probably UpToDate, which is an</p> <p>15 online, oh, what do you call it, medical thing for</p> <p>16 doctors. You know what I mean? And then just -- I</p> <p>17 don't remember what I Googled, just, you know,</p> <p>18 alcohol levels, cognition, you know, correlation</p> <p>19 between alcohol levels and functioning, or I don't</p> <p>20 remember exactly what, or exactly where, but that's</p> <p>21 what I did.</p> <p>22 Q. Okay. With respect to this UpToDate, is</p> <p>23 that a peer reviewed --</p> <p>24 A. Yes.</p> <p>25 Q. -- source?</p>	<p style="text-align: right;">51</p> <p>1 Googled. I'm sorry. I don't remember that.</p> <p>2 Q. Those other two, PubMed --</p> <p>3 A. PubMed is probably peer-reviewed. At</p> <p>4 least it publishes medical articles. You know what I</p> <p>5 mean?</p> <p>6 Q. And is that a subscription?</p> <p>7 A. No, that's not.</p> <p>8 Q. Is that just a -- you can Google PubMed --</p> <p>9 A. I may have looked at Mayo Clinic</p> <p>10 Proceedings. What else did I look? I don't remember</p> <p>11 where. I'm sorry. I really don't remember. This</p> <p>12 was done in January.</p> <p>13 Q. You don't recall exactly what your</p> <p>14 methodology was with respect to formulating this</p> <p>15 opinion --</p> <p>16 A. No.</p> <p>17 Q. -- except for that you --</p> <p>18 A. I just went online and plowed through it.</p> <p>19 Q. Is this another one of those opinions that</p> <p>20 at trial you would be leery of giving?</p> <p>21 A. Okay. The answer is probably yes, because</p> <p>22 it should be probably given by somebody who sees</p> <p>23 alcoholics all of the time. Look, when I see people</p> <p>24 intoxicated in the hospital, that's a one-off kind of</p> <p>25 thing. Do you know what I mean?</p>
<p style="text-align: right;">50</p> <p>1 A. Yes.</p> <p>2 Q. And do you recall what information you</p> <p>3 were actually able to get off of UpToDate?</p> <p>4 A. Of that, no, but it's an online thing.</p> <p>5 It's a subscription thing and it's peer-reviewed and</p> <p>6 -- but I -- I don't know if I actually used that for</p> <p>7 UpToDate or if I just went on like Medscape or PubMed</p> <p>8 or what or those other -- Medscape, PubMed, UpToDate,</p> <p>9 and that. I just Googled around and looked for</p> <p>10 alcohol levels correlating with mental status.</p> <p>11 Q. Would you agree with me to be able to</p> <p>12 render this opinion that, in essence, what you did is</p> <p>13 a Google search?</p> <p>14 A. That's basically true. That is what I</p> <p>15 did.</p> <p>16 Q. You did a Google search?</p> <p>17 A. With also the online things that I have</p> <p>18 available to me.</p> <p>19 Q. When you say the online things that you</p> <p>20 have --</p> <p>21 A. Like UpToDate.</p> <p>22 Q. Are there any other things besides</p> <p>23 UpToDate that you may have looked at?</p> <p>24 A. Yeah. I'm sorry. I don't remember. It</p> <p>25 could have been PubMed, UpToDate, Medscape. I just</p>	<p style="text-align: right;">52</p> <p>1 Like this guy, if I would have seen him in</p> <p>2 the hospital, that's why I had to Google this, is</p> <p>3 because this was so high that I almost couldn't</p> <p>4 believe it. You know what I mean? This guy was even</p> <p>5 up and walking around. I looked at it twice to make</p> <p>6 sure that I had it right. And that's why I had to</p> <p>7 Google it, because it was so high.</p> <p>8 Q. And so do you intend to offer this type of</p> <p>9 an opinion during trial?</p> <p>10 A. The opinions that I would offer at trial</p> <p>11 is that it was so high, I had to Google it to get my</p> <p>12 feet on the ground.</p> <p>13 Q. Do you feel like you don't have the</p> <p>14 qualifications to testify about something like this?</p> <p>15 A. I would testify that I do not treat</p> <p>16 alcoholics or detox alcoholics and exact correlation</p> <p>17 between alcohol levels and behavior should be</p> <p>18 determined by people who do that all of the time.</p> <p>19 Q. Sir, I want to now kind of just talk a</p> <p>20 little bit about what information you were provided.</p> <p>21 Were you provided with a copy of Mr. Chatwin's</p> <p>22 deposition transcript?</p> <p>23 A. Uh-uh (negative). Deposition transcript?</p> <p>24 Q. Where he testified under oath.</p> <p>25 A. No.</p>

<p style="text-align: right;">77</p> <p>1 I see people riding around on motorcycles without 2 helmets. It's just a little nuts, like, look if you 3 want to ride a motorcycle, I guess that's okay, but 4 at least wear a helmet. That's all I'm saying. 5 Q. Okay. You were asked some questions about 6 the line in here that says you just didn't think his 7 hearing was going to get any better. Was that based 8 on anything objective? 9 A. Yeah. His examination showed that he was 10 still having problems six years later. 11 Q. What I'm asking for is when you say the 12 left cranial nerve VIII -- 13 A. Yeah. 14 Q. -- was damaged, what -- 15 A. That goes to -- 16 Q. How do you know that it was damaged? 17 A. I know that because his hearing is poor on 18 that side and that's what the cranial nerve does. It 19 goes to your ear. 20 Q. And you used the word when you were 21 talking about helmet, you said head injuries are, 22 let's see, "neurological community considers head 23 injuries to be cumulative." 24 What does "cumulative" mean? 25 A. That more injuries over time is bad.</p>	<p style="text-align: right;">79</p> <p>1 descriptions of hemosiderin deposition within the 2 substance of the brain. You're saying it's there and 3 he's saying it's not. 4 A. Okay. Our radiologist thought there was 5 some at the surface of the brain, on the MRI report. 6 I looked at it. I thought there was some, too. It's 7 not quite clear if it's on the surface of the brain 8 or in the brain. Either way, there's probably a 9 little bit of blood that had been -- that was there, 10 and either way it's not good. It just represents the 11 injury. 12 Q. Okay. 13 A. And you could think of hemosiderin as you 14 whacked your thigh with something or another and 15 you've got a bruise. A hemosiderin might represent 16 the residual of the breakdown products of that 17 bruise. 18 MS. MARCY: That's all I have. 19 FURTHER EXAMINATION 20 BY MR. HAMILTON: 21 Q. A few follow-up questions. You talked a 22 little bit about the fact that you did do a rotation 23 and you used air quotations when you talked about it 24 and said psychiatry -- 25 A. Oh, yeah.</p>
<p style="text-align: right;">78</p> <p>1 Well, ala Mohammed Ally, ala Steve Young, ala, you 2 know, anybody like that, we really do not think that 3 it's good to have multiple head injuries. 4 Q. What does -- above there you say, "It's 5 well-know that hemosiderin is epileptogenic." 6 What is hemosiderin? 7 A. Hemosiderin is the breakdown product from 8 blood and it is -- what happens is a waste product 9 with blood is broken down and what's left over is an 10 iron-containing compound. 11 Q. And is that something bad? 12 A. Well, it's bad in the sense that the body 13 may not be able to clear it. Certainly the brain may 14 not be all to clear it. And it's irritating to the 15 nervous system. And epileptogenic means it may cause 16 seizures later. 17 Q. And what is this -- so what does this 18 hemosiderin have to do with Josh's situation? 19 A. That he -- the fact that he had some 20 bleeding means that his -- that puts him at a risk 21 then for the seizures that can happen from 22 posttraumatic bleeding either in the brain or at the 23 surface of the brain. 24 Q. Let's see. Now, in Dr. Goldman's report 25 he says when he looked at the images he saw no</p>	<p style="text-align: right;">80</p> <p>1 Q. -- during your residency. 2 A. Yes. 3 Q. I just wanted to establish when your 4 residency was. We're talking about the years of 1975 5 to 1978, correct? 6 A. No. Yes. '75 to '78. Yes. 7 Q. And so you haven't done any type of 8 psychiatric rotation since 1978? 9 A. That is correct. 10 Q. And during your psychiatric rotations you 11 had attendings who, you said someone that was 12 actually a psychiatrist, to tell you what to do? 13 A. Yes. We rotated on the psychiatric floor 14 as psychiatrists and -- but we had attendings and we 15 were under supervision. And this was not like a real 16 psychia -- we were not practicing psychiatry. This 17 was in the hospital in a controlled situation. 18 Q. You also were asked some questions with 19 respect to the paragraph dealing with alcohol and the 20 Google research that you did -- 21 A. Uh-huh (affirmative.) 22 Q. -- involving impairment. 23 A. Uh-huh (affirmative). 24 Q. And Ms. Marcy asked you some questions 25 about that and you referred to the fact that you had</p>